IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 24562 of 2003

Between:

M/s Vijaya Indane Gas Agency, 25/2/981-1, Opp. DSR Govt.HO.Hospital, Dargamitta, Nellore -525 004, rep. by its Proprietrix Smt.N. Nalini.

..... PETITIONER

AND

1 The Area Manager (LPG) Indian Oil Corporation Limited Indane Area Office GVR Towers, II Floor, Bharathi Nagar, Ring Road, Vijayawada.
2 The Assist. Manager (LPG) Indian Oil Corporation Limited
Flat No.11, Anjana Apartments, Tekkametta, Nellore,
Nellore District 524 003
3 M/s Krishna Agency Indane Gas Distributor
26/426-C1, GT Road, Opp: Kasturidevi High School
Nellore.

4 Chief L.P.G. Manager, Indian Oil Corporation Ltd.,

Himayat Nagar, Hyderabad.

5 The General Manager (L.P.G.),

Indian Oil Corporation Ltd., (Marketing Division),

Himayathnagar, Hyderabad.

(Respondents 4 and 5 impleaded as per Court Order Dated 22-06-2004

in W.P.M.P.No.10855 of 2004.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, or nay other appropriate writ, order or direction, declaring

the action of the first and second respondents in not implementing the MOP directions and LPG Manual Guidelines in respect of maintaining the ceiling limit on sale of refills with proportionate connections and not considering the representations of the petitioner in the light of the MOP directions and LPG Manual Guidelines and instructions issued from time to time as illegal, arbitrary, against Principles of natural justice and biased and direct the respondents to act according to the MOP directions and LPG Manual Guidelines in respect of maintaining the ceiling limit and further direct the first and second respondents to transfer from third respondent, 4000 sale of refills with proportionate connection to the petitioner agency.

Counsel for the Petitioner: MR.T.AMARNATH GOUD

Counsel for the Respondent Nos.1,2,4 & 5 : MR.P.V.SANJAY KUMAR

Counsel for the Respondent No.3: None appeared.

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

W.P.NO.24562 OF 2003

ORDER:

Heard both sides.

The petitioner herein, which is a gas agency, filed this writ petition, inter alia, seeking writ of Mandamus to declare the action of the respondents in not implementing the MOP directions and LPG manual guidelines in maintaining ceiling limit on sale of refills with the proportionate connections and not considering the representations in the light of the aforesaid directions and guidelines from time to time, as illegal and contrary to the principles of natural justice.

The petitioner, which is new entrant in the filed, was appointed as a distributor with the respondent Nos. 1 and 2 herein, as per the proceedings dated 11-06-2002 and accordingly an agreement was entered into on 22-06-2002 between the parties with all the terms and conditions for the area of operation for distribution in respect of Kondayapalem and villages covering within 15 kms radius. On 23-06-2002, showroom was opened and the petitioner has started the business. As on 31-10-2003 it is stated that the domestic customers are 7164, and under Deepam Scheme 1551 customers. Total customers are 8715. The dead customers i.e., inoperative customers are 1629 and all Deepam Scheme Customers, who are not having stoves to utilize cylinders, are 1551. Thus, the active customers are 5535. The average refills sale per month is 3500.

The grievance of the petitioner is that as per the manual ceiling, limit has been fixed at 8,000 LPG refills, in respect of an area having population of up to 10,00,000. If it falls below the said limit, the business will be unviable and in the event of said limit crossing the excess has to be adjusted to the other agencies, who are falling short thereof. These instructions are being following for the purpose of maintaining viability of the agencies. It was pointed out that some agencies as mentioned in the para 7 of the affidavit are having 70,000 connections and whereas the sale of refills per month in respect of petitioner agency comes to around 3000 only, which is far less than 8000. Therefore, he had approached the respondents several times and he filed a representation before the 1st and 2nd respondents for giving effect to the guidelines and to maintain the ceiling limit. In spite of the same and in spite of the inspection made by the Area Manager on 26-03-2003, no proper approach has been made, nor there is any attempt to reach the ceiling limit in the case of the petitioner agency. The petitioner on several occasions, as pointed out in the affidavit, has not only met the authorities, but also the higher ups, who expressed their displeasure, in not making proper provision. Therefore, the case of the petitioner is that, if atleast 4000 sale of refills with proportionate connections are transferred from 3rd

respondent to the petitioner that would not only meet the ceiling limit, as fixed, but also make the business more viable. However, a discrimination is sought to be made against the petitioner by not accepting to such request and showing favour with the 3rd respondent and other agencies, which are no doubt in the field quite some time. Hence, the Writ Petition.

This Court had initially granted the interim directions in W.P.M.P.No.30928 of 2003 dated 05-02-2004, directing the respondents to consider the representation of the petitioner dated 07-08-2003 for re-structuring the connections, as per the policy in force.

In the counter-affidavit, filed on behalf of the respondents herein, it is stated that no doubt the petitioner is an agency and a ceiling limit has been fixed at 8000 in respect of town with 10,00,000 population. In para 5 it was pointed out that Indian Oil Corporation Limited has four other LPG distributors at Nellore town and a statement has given as to the total numbers of customers existing with them as on January, 2004. However, it was pointed out that the process of transferring connections to the petitioner from other distributorships, commenced on 27-07-2002 and till date 8056 customers have already been transferred. The particulars of which has been shown in para 6 of the counter-affidavit, which according to them, the refill sales of the petitioner per month have already touched the 50% of the ceiling limit mark. Therefore, there is no necessity to transfer any further connections to the petitioner. Even otherwise, it was pointed out that petitioner also reached the refills sales of 4399 in December, 2003 and 4281 in January, 2004, which itself shows sufficient achievement on its part. Further, 5172 customers out of the total 8056 customers were already transferred to the petitioner. In view of the same, no grievance can be made out and yet there is any such dispute the petitioner can approach the alternative remedy of arbitration, as provided for under the terms of the agreement. Hence, no writ lies.

Considering the submissions made and also on perusal of the material, the main grievance of the petitioner centers around is non-transfer of the refills to the petitioner agency from other agencies in the town, so as to reach the ceiling limit. There is no dispute in regard to ceiling limit, as determined by the respondent Nos.1 and 2 themselves. There is also no doubt that respondent No.3 and other agencies having far more than the required extent and which go beyond the ceiling limit.

There is also no dispute in regard to the fact that as per the directions and guidelines given by them, necessarily each agency has to reach the ceiling limit by making a provision from the other, who has got excess. Prima facie, the grievance of the petitioner appears to be very genuine. However, having regard to the interim directions already given and the statements made in the counter-affidavit to the effect that sufficiently the refills have already been transferred to the petitioner, so as to reach the target, there cannot be any grievance remaining, which is yet to be solved. It is also pointed out that the entire business is a typically a captive market and therefore there is no justification for the petitioner's complaint.

Having thus considering the submissions made on either side and also on perusal of the material, it is seen that in view of the interim orders passed by this Court and also in view of the submissions made in the counter-affidavit, regarding sufficient transfer of refills, the petitioner cannot make any further grievance. However, any such dispute is raised, it is always open for the petitioner to invoke the arbitration clause and seek the settlement thereof. It is also to be noticed that in view of such adjustment has already been made to the sufficient extent, it is not open for this Court to go into all these aspects under article 226 of the constitution of India.

Accordingly, the Writ Petition is disposed of giving liberty to the petitioner to avail the alternative remedy of arbitration. No costs.

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B.PRAKASH RAO, J.

Dated 07-09-2004.

skmr

To

1 The Area Manager (LPG) Indian Oil Corporation Limited Indane Area Office GVR Towers, II Floor, Bharathi Nagar, Ring Road, Vijayawada.
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